

## **Rule of Law and Terrorism, The New War Against Democracy.**

1. Sept. 11 2001, is considered to be the "watershed", the declaration of war by the Al Quida terrorist organization and Ben Laden on America.
2. The 21st Century poses different risks and challenges to democracies of the "free world". The real threat and danger now derives from terrorists and countries which provides safe haven to these organizations.
3. This seminar is aimed to provide the students with a unique knowledge and understanding about the legal implications and ramifications of dealing with and fighting terrorism.
4. The material for the seminar is based on lengthy legal research as well as the experience of some western countries, such as Israel, England, Canada and USA, in dealing with the problems of terrorism while at the same time preserving and defending the basic values of human rights which are the corner stones for democracies.
5. This seminar will underscore the right of people under occupation to resist their occupiers, and their status, under the international law as freedom fighters and legal combatants.
6. The seminar shall raise questions and encourage discussions on topics such as:
  - A. The distinction between a "freedom fighter" and a "terrorist".
  - B. May a democratic state deviate from its normal criminal rules of procedure and evidence when dealing with the investigation of terror suspects?
  - C. May a democratic state hold terrorists as bargaining chips?
  - D. May a democratic state put to death persons suspected of terrorist action as a preemptive measure? How such acts can be balanced against basic human rights such as the right to be tried by a competent court and the right of due process of law?
7. What law is applicable to states which give patronage to terrorist organizations?
8. Does this patronage provide a pretext for war or warlike acts?
9. Was America justified when she considered the attack against her as a declaration of war?
10. Does the international law regulate declaration of war by terrorist organization? against a state?

11. What law applies to states, which give patronage to terrorist organizations? Can this conduct from the point of the laws of war be regarded as Casus Belli?
12. What is the due balance between the needs of security and the basic right of privacy?
13. Can a democratic state revoke the citizenship of person who is involved in acts of terrorism?
14. Do we need an emergency constitution in order to combat terrorism?
15. Does the meaning of self defense include the right to use security barrier ?
16. How the law should regard the phenomenon of suicide bombers?

The following papers are supportive of the issues of the seminar:

1. The Struggle of Democracy against Terrorism. Lessons from the United States, The United Kingdom and Israel (Virginia University Press 2006).
2. Emanuel Gross, Human Rights in Administrative Proceedings: A Quest for Appropriate Evidentiary Standards, 31(2) California Western International Law Journal 215 (2001)
3. Emanuel Gross, Legal Aspects of Tackling Terrorism: The Balance Between the Right of a Democracy to Defend Itself and the Protection of Human Rights, 6 UCLA Journal of International Law and Foreign Affairs, 89 (2001)
4. Emanuel Gross, Human Rights v Terrorism: Does A Democracy Have A Right to Hold Terrorists As Bargaining Chips? And The Problem of Administrative Detention, 18 Arizona Journal of International Law 721(2001).
5. Emanuel Gross, Thwarting Terrorists Acts By Attacking the Perpetrators or their Commanders As An Act of Self-Defense. Is This Legitimate? –Human Rights Versus The State's Duty to Protect its Citizens. 15 Temple International and Comparative Law Journal 195 (2001).
6. Emanuel Gross, Democracy's Struggle Against Terrorism: The Powers of Military Commanders to Decide Upon Demolition of Houses, The imposition of Curfews, Blockades, Encirclements and the Declaration of an Area as a Closed Military Area. The Struggle Against Terrorism Versus Human Rights-The Appropriate Balance. 30 Georgia Journal of International and Comparative Law 165 (2002).
7. Emanuel Gross, Democracy In The War Against Terrorism-The Israeli Experience. 35 Loyola of Los Angeles L. Rev. 1161(2002).

8. Emanuel Gross, The Influence of Terrorist Attacks On Human Rights in the United States: The Aftermath of September 11, 2001. 28 North Carolina J. of Intl. L & Com. Reg. 1 (2002).
9. Emanuel Gross, Trying Terrorists-Justification for Differing Trial Rules: The Balance Between Security Considerations and Human Rights. 13 Indiana Intl. & Com. L. Rev. 1 (2002).
10. Emanuel Gross, Use of Civilian as a Human Shield: What Legal and Moral Restrictions Pertain to a War Waged by a Democratic State Against Terrorism? 16 Emory International Law Review 445 (2002).
11. Emanuel Gross, The Laws of War Waged Between Democratic States and Terrorist Organizations. 15 Florida J. of Int. L. 389 (2003).
12. Emanuel Gross, Defensive Democracy: Is it Possible to Revoke the Citizenship, Deport or Negate the Civil Rights of a Person Instigating Terrorist Actions Against His Own State? 72 UMKC.L. Rev. 51 (2003).
13. Emanuel Gross, The Struggle of a Democracy against Terrorism – Protection of Human Rights: The Right to Privacy versus the National Interest – the Proper Balance. 27 Cornell International Law Journal 28 (2004)
14. Emanuel Gross, The Struggle Of A Democracy Against the Terror of Suicide Bombers: Ideological and Legal Aspects. 22 Wisconsin International Law Journal 597 (2004)
- 15 Emanuel Gross, Combating Terrorism: Does Self Defense Include the Security Barrier? The Answer Depends on Who You Ask. 38 Cornell International Law Journal 569 (2005)
16. Neil McDonald & Scot Sullivan, Rational Interpretation In Irrational Times: The Third Geneva Convention And The "War on Terror" 44 HVILJ 301 (2003)
17. Kent Roach, Did September 11 Change Everything? Struggling to Preserve Canadian Values In The Face of Terrorism. 47 McGill L. J 893 (2002)
18. Eunice Machado, Special Notes On Bill C-36: A Note On Terrorism Financing Offences In Bill C-36, 60 U. T. Fac. L. Rev. 103 (2002)
19. Stephen J. Toope, Fallout From '9-11': Will a Security Culture Undermine Human Rights? 65 Sask. L. Rev. 281 (2002)
20. David Tanovich, Using the Charter to Stop Racial Profiling: The Development of an Equality-Based Conception of Arbitrary Detention, 40 Osgoode Hall L. J. 145 (2002)
21. Alexandra Dostal, Special Notes On Bill C-36: Casting the Net too Broadly: The Definition of "Terrorist Activity" in Bill C-36. 60 U.T. Fac. L. Rev. 65 (2002)

22. Jermy Millard, Special Notes On Bill C-36: Investigative Hearing Under the Anti-Terrorism Act, 60 U. T. Fac.L. Rev. 79 (2002)
23. Roberta Smith, America Tries to Come to Terms with Terrorism: The United States Anti-Terrorism and Effective Death Penalty Act of 1996 v. British Anti-Terrorism Law and International Response, 5 Cardozo.J. Int'l& Comp. L. 249 (1997).
24. Ronald J. Sievert, Meeting the Twenty First Century Terrorist Threat Within the Scope of Twentieth Century Constitutional Law, 37 Hous. L. Rev. 1421 (2000)
25. Kevin Dooly Kent, Basic Rights and Anti-Terrorism Legislation: Can Britain's Criminal Justice (Terrorism and Conspiracy) Act 1998 Be reconciled With Its Human Rights Act? , 33 Vand. J. Transnat'l L. 221 (2000)
26. Bruce Ackerman "The Emergency Constitution" 113 Yale.L.J 1029 (2004)
27. Bruce Ackerman "This is Not a War" 113 Yale. L. J 1871 (2004)
28. David Cole "The Priority of Morality : The Emergency Constitution's Blind Spot" 113 Yale. L. J 1753 (2004)